



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,607	02/27/2004	Masakazu Bamba	FUSKA 21.005	9057

  

26304	7590	01/24/2008
KATTEN MUCHIN ROSENMAN LLP		
575 MADISON AVENUE		
NEW YORK, NY 10022-2585		

  

EXAMINER	
JEAN, FRANTZ B	

  

ART UNIT	PAPER NUMBER
2154	

  

MAIL DATE	DELIVERY MODE
01/24/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

mn

<b>Office Action Summary</b>	<b>Application No.</b> 10/789,607	<b>Applicant(s)</b> BAMBA, MASAKAZU	
	<b>Examiner</b> Frantz B. Jean	<b>Art Unit</b> 2154	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 November 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

This office action is in response to applicants' response filed on 11/06/07. Claims 1-19 are still pending in this office action.

The amendment filed on 11/06/07 was entered in the file.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Wong et al. hereinafter Wong US publication number US 2003/0193898 A1.

As per claims 1 and 19, Wong teaches a communication apparatus in a communication network in which a plurality of routes can be set with respect to a destination (see fig 1), comprising: a line condition acquiring unit that acquires line condition information on a communication condition of a communication line in each route (see fig 7; abstract; par 0025); a communication cost calculating unit that calculates a communication cost of each route (fig 1; par 0103-0104; par 0164-0182), based on the line condition information in the route; and a route selecting unit that selects a route from the plurality of routes based on the communication cost calculated (fig 1; par 0076-0087).

As per claim 2, Wong teaches a communication apparatus according to claim 1, further comprising a communication cost outputting unit that outputs the communication cost to outside (par 0146-0151).

As per claim 3, Wong teaches a communication apparatus according to claim 1, wherein the line condition acquiring unit acquires a service condition information on a service condition of the communication line, and the communication cost calculating unit calculates the communication cost based on the service condition information (see par 0164-0181).

As per claim 4, Wong teaches a communication apparatus according to claim 1, wherein the line condition acquiring unit acquires a failure information, that is information about presence or absence of failure in the communication line, and if the failure is present, the communication cost calculating unit calculates the communication cost based on a type of the failure (par 0004).

As per claim 5, Wong teaches a communication apparatus according to claim 1, wherein the line condition acquiring unit acquires reserve line information, that is information about presence or absence of a reserve line in the communication line, and if the reserve line exists, the communication cost calculating unit calculates the communication cost based on a type of the reserve line (par 0026, 0029, 0142 and 0197; alternate path and second explicit route).

As per claim 6, Wong teaches a communication apparatus according to claim 1, wherein the line condition acquiring unit acquires the line condition information at regular intervals (par 0088; determine paths more quickly).

As per claim 7, Wong teaches a communication apparatus according to claim 1, further comprising an inputting unit to input a communication of each route, wherein the route selecting unit selects the route from the plurality of routes based on the communication cost input (fig 1; par 0076-0087).

As per claim 8, Wong teaches a communication apparatus according to claim 1, further comprising: a communication cost acquiring unit that acquires a communication cost of each route from outside, wherein the route selecting unit selects the route from the plurality of routes based on the communication cost acquired (fig 1; par 0076-0087).

As per claim 9, Wong teaches a communication apparatus according to claim 1, further comprising a storage unit to store the communication cost calculated (par 0104; memory means).

Claims 10-18 are method claims of the apparatus claims 1-9. They contain the same limitations. Therefore, they are rejected under the same rationale.

***Response to Arguments***

Applicant's arguments filed on 11/06/07 have been fully considered but they are not persuasive.

Applicants argued that Wong does not teach a line condition.

Examiner submits that Applicants have misinterpreted the prior art of record. Fig 1, element 12 of Wong discusses path (line) computation processor, wherein decision regarding to route selection and communication cost is based on the path (line) condition (see paragraphs 103-104). In addition, Wong defines a route as a list of links that form a path (line) (par 105). Therefore, examiner concludes that Wong discloses a line condition which determines communication cost and route selection. Accordingly, the rejection is maintained.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ji et al disclose adjusting splitting factor associated with congested and alternative links (see abstract).

Benmohamed discloses new network cost; reconfiguring network cost (fig 2; par 0079-0081, 0090).

Hsu discloses route selection based on cost (abstract).

Applicant is requested to consider the prior art of record upon responding to this office action.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz B. Jean whose telephone number is 571-272-3937. The examiner can normally be reached on 8:30-6:00 M-f.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Flynn can be reached on 571-272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Application/Control Number:  
10/789,607  
Art Unit: 2154

Page 7

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Frantz Jean



**FRANTZ B. JEAN**  
**PRIMARY EXAMINER**